

# **United States Department of Justice**

## **General Legal Activities**



**Office of the Pardon Attorney**

**FY2022 Congressional Submission**

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## **I. Overview**

For FY 2022, the Office of the Pardon Attorney (OPA) requests a total of \$16,423,000, 80 positions, and 50 FTE, including 46 attorneys, to achieve its mission of advising and assisting the President in the exercise of the executive clemency power conferred on him by Article II, Section 2 of the Constitution. This request supports current services needs as well as a program increase to enhance the executive clemency function and support the growing demand for a more just and proportional clemency review program.

### **Introduction**

For over 125 years, the President has requested and received the assistance of the Attorney General and his/her designees in the Department of Justice in exercising clemency power with regard to persons convicted for committing offenses against the United States. Within the Department, OPA is the component assigned to carry out this function under the direction of the Deputy Attorney General. The long-standing role of Department officials advising the President on clemency matters is reflected in various public record documents dating to the late 19th century. Moreover, since at least 1898, presidents have adopted advisory rules to describe their programs for processing clemency applications and their directions to the Attorney General in carrying out the Department's clemency advisory functions. The rules, which govern OPA's work but do not bind the President, are approved by the President and published by the Attorney General. The current version of the administrative rules was promulgated in October 1993 and amended in August and September 2000. They are published in 28 C.F.R. §§ 1.1 to 1.11 and available on OPA's web site at <https://www.justice.gov/pardon/legal-authority-governing-executive-clemency>.

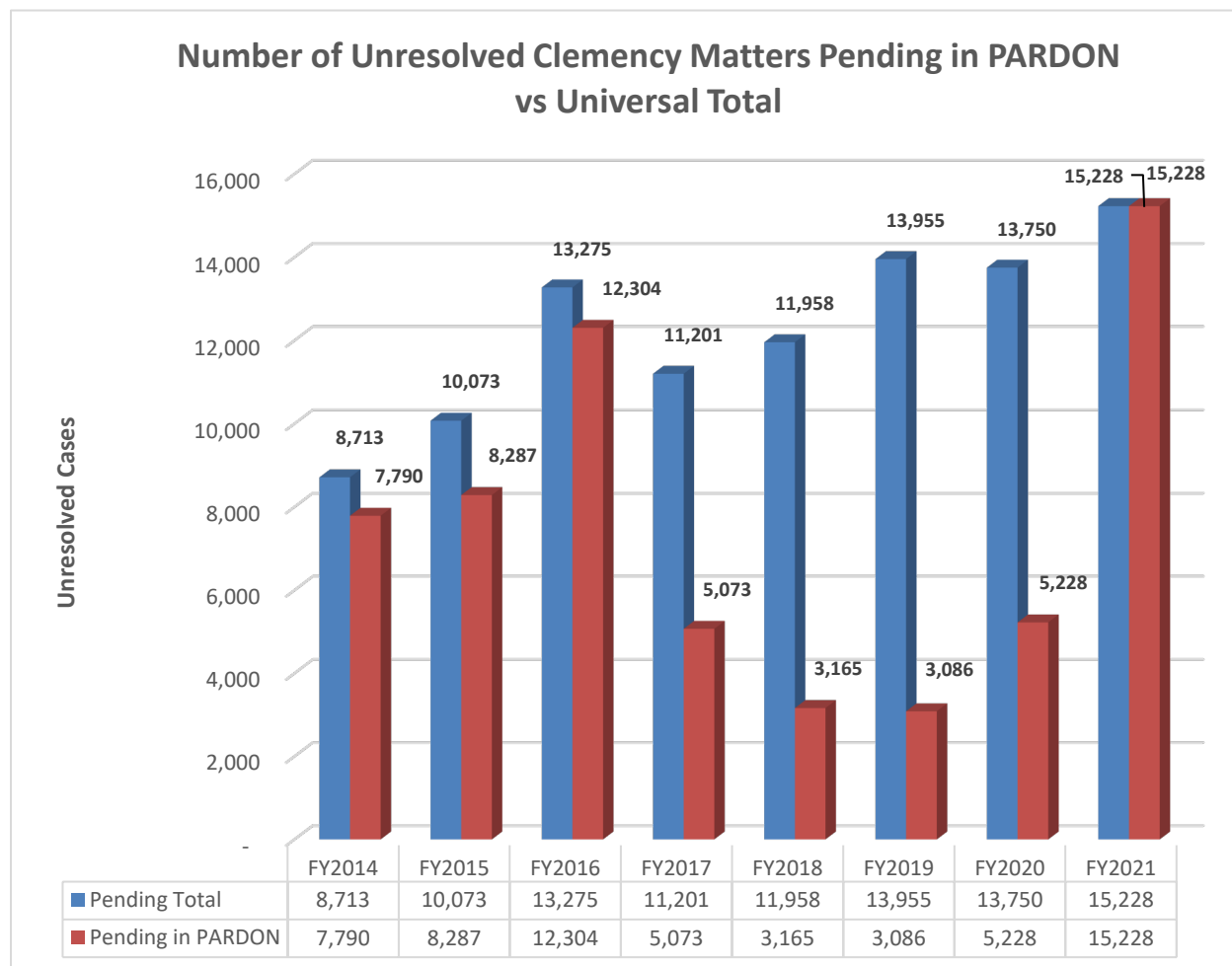
The two principal forms of clemency sought by applicants are (1) pardon after completion of sentence and (2) commutation (reduction) of a sentence being served. Within a commutation request, a petitioner can also seek remission of fine or restitution, commutation of supervised release, or commutation of home confinement. The traditional standards by which clemency applications are evaluated in connection with the preparation of the Department's letters of advice to the President have been utilized for decades and are publicly available on OPA's web site at <https://www.justice.gov/pardon/about-office-0>.

### **Program Description**

The primary function of OPA is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department of Justice as to the appropriate disposition of each application for the signature of the Deputy Attorney General. In addition, OPA responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, Members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When asked to do so, OPA also provides general advice to the White House concerning executive clemency procedures and the historical background on clemency matters.

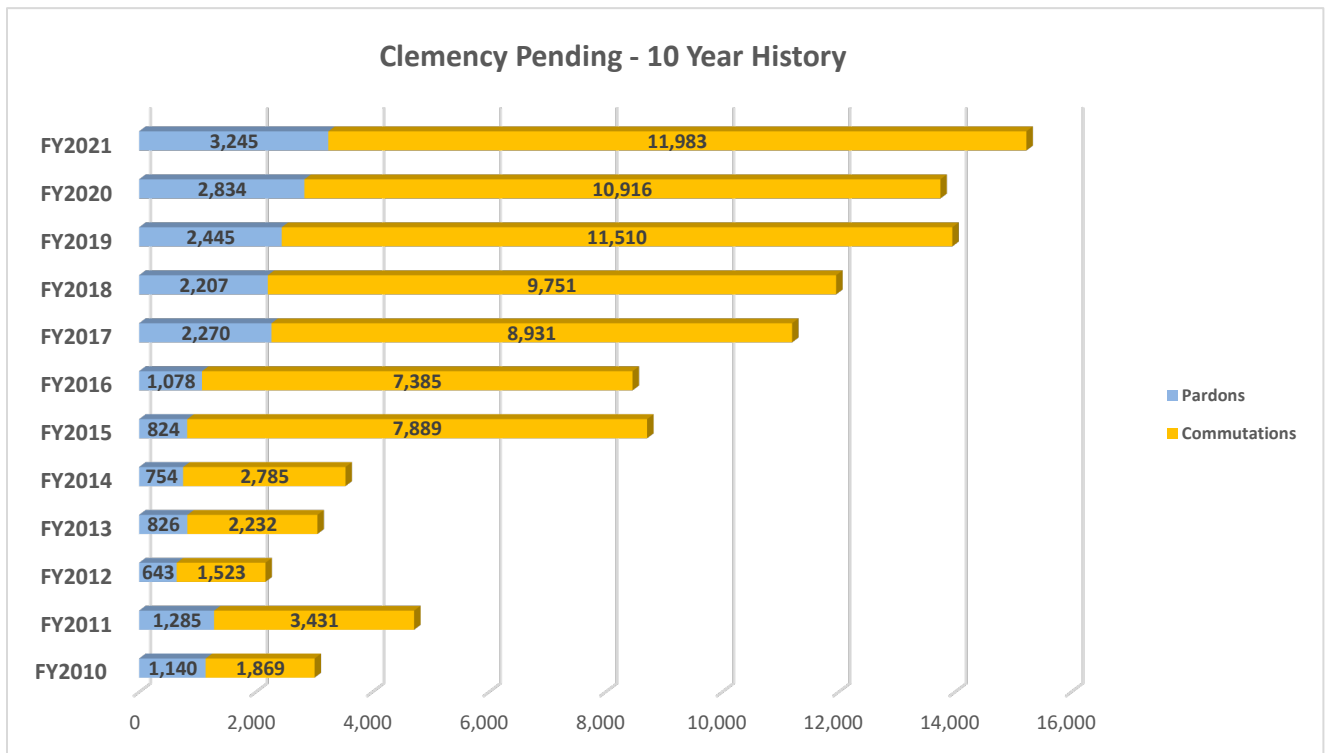
## Challenges

OPA’s workload has continued to increase over the last decade to include a high-profile presidential clemency initiative and various DOJ and White House priority processing projects. Between FY 2010 and FY 2020, OPA received approximately 45,275 new petitions (clemency cases) for processing, of which 40,586 were petitions for commutation of sentence. In FY 2016 alone, OPA received a total of 12,025 new clemency petitions. Up until FY 2014, OPA’s authorized staffing level was 11 positions - a level that was established for the office in the mid-1990s, when OPA received approximately 600 new clemency cases each fiscal year. The authorized staffing level was raised to 22 employees during FY 2015 but was taken down to 20 at the start of calendar year 2017, which is where it stands today. The challenge of maintaining high morale and overall effectiveness of a highly visible clemency program with an office of 20 employees handling over 15,000 cases is daunting. It should also be noted that OPA is currently required to pull back all cases that are undecided by the President and the Deputy Attorney General at the end of a presidential administration for updates and resubmission through the new administration. As a result, over 8,000 cases were pulled back to OPA for updates in February of 2021. The FY 2022 budget request will allow OPA to finally address the significant number of backlogged cases created from the steadily increased workload. <sup>1</sup>



<sup>1</sup> The chart entitled **Number of clemency matters pending in OPA vs. Universal Total** shows the backlog of cases in OPA vs. those cases pending throughout the entire clemency process on the last day of each fiscal year for the past few years or during the last reporting for the current fiscal year.

OPA is required to process, analyze, and make recommendations on all applications it receives, regardless of whether the request for clemency is meritorious or not. Both denial and favorable recommendations are forwarded to the Deputy Attorney General and the President for final adjudication. On occasion, OPA is required to rework cases that have already been fully analyzed if deemed necessary by either the President or the Deputy Attorney General. Since there is no limit to the number of clemency petitions that can be submitted to OPA for consideration by the President, and the President has plenary power to decide if and when to make clemency decisions, OPA has no control over the size of the universal caseload it must track and update. OPA could easily receive cases beyond its capacity to process as it has over the past few years and cases can also remain in “pending” status somewhere other than OPA while still remaining on our open case list, per the chart above that shows the number of cases currently pending in OPA as opposed to those pending elsewhere in the clemency process. The impact of this massive influx of new cases and reworked cases over the past decade will continue to be felt by the office for many years to come. As a result, obtaining the resources requested for FY 2022 is essential to OPA’s continuing ability to address increased workloads and provide timely and persuasive letters of advice to the President on the merits of those who have applied for executive clemency through the Department, as well as provide a historical background of clemency matters.<sup>2</sup>



<sup>2</sup> The chart entitled **Pending Clemency Cases – 10 Year History** shows the successive increase of petitions pending universally at the end of a fiscal year or at the close of the most recent reporting period of the current year.

## II. Summary of Program Changes

After performing an analysis of the challenges facing the current clemency program, Department leadership agrees with OPA on the need for a program increase to enhance the executive clemency function. The program increase includes a total of \$10,940,000, 60 positions, and 30 FTE, including 35 attorneys, to achieve its mission of advising and assisting the President in the exercise of his constitutional executive clemency power.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Enhancing the Executive Clemency Function	DOJ seeks to enhance the executive clemency function within the Department to appropriately support the role of the Deputy Attorney General and the President	60	30	\$10,940	10

## III. Appropriations Language and Analysis of Appropriations Language

General Legal Activities language is displayed in the GLA rollup budget submission.

## IV. Program Activity Justification

### A. Office of the Pardon Attorney

Office of the Pardon Attorney	Direct Pos.	Estimate FTE	Amount (\$000s)
2020 Enacted	20	17	\$4,766
2021 Enacted	20	20	\$4,810
Adjustments to Base and Technical Adjustments	0	0	\$673
2022 Current Services	20	20	\$5,483
2022 Program Increases	60	30	\$10,940
2022 Request	80	50	\$16,423
<b>Total Change 2021-2022</b>	<b>60</b>	<b>30</b>	<b>\$11,613</b>

#### 1. Program Description

OPA's primary function is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department as to the appropriate disposition of each application for the signature of the Deputy Attorney General and consideration by the President. OPA also responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, members of Congress, and various federal, state, and local officials and agencies; prepares all necessary

documents to effect the President's decision to grant as well as deny clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When requested by the White House, OPA also provides general advice to the President concerning executive clemency procedures and the historical background of clemency matters.

## 2. Performance Tables

TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Program Activity												
		Processing presidential clemency petitions	20	4,766	20	4,766	20	4,810	60	\$11,613	80	16,423
Performance Measure	4.1	Number of clemency petitions pending anyw here in the clemency process		N/A		13,625		N/A		N/A		N/A
Performance Measure	4.1	Number of clemency petitions pending within the Office of the Pardon Attorney		3,500		5,004		3,500		6,500		10,000
Performance Measure	4.1	Number of clemency petitions pending within the Office of the Pardon Attorney that were opened more than 1 year ago		N/A		2,417		100		9,900		10,000
Performance Measure	4.1	Number of clemency petitions processed by the Office of the Pardon Attorney		3,000		813		3,000		2,000		5,000
Performance Measure	4.1	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney		2,400		3,882		2,400		1,100		3,500
OUTCOME Measure	4.1	Percentage of the total clemency caseload pending within the Office of the Pardon Attorney		<=40%		37%		<=40%		N/A		<=40%

Data Definition, Validation, Verification, and Limitations: OPA's electronic case tracking and processing system is updated daily and used extensively to track the status of each clemency casefile and all case-related and non-case-related correspondence. Performance data derived therefrom is audited monthly to ensure accuracy and publicly disclosed in summary format for transparency.



PERFORMANCE MEASURE TABLE										
Component/Decision Unit: OFFICE OF THE PARDON ATTORNEY										
Strategic Objective	Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020		FY 2021	FY 2022
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
4.1	<b>Performance Measure</b>	Number of clemency petitions pending anywhere in the clemency process	13,275	11,201	11,958	13,955	N/A	13,625	N/A	N/A
4.1	<b>Performance Measure</b>	Number of clemency petitions pending within the Office of the Pardon Attorney	12,304	5,073	3,165	3,086	3,500	5,004	12,000	10,000
4.1	<b>Performance Measure</b>	Number of clemency petitions pending within the Office of the Pardon Attorney that were opened more than 1 year ago	N/A	N/A	N/A	611	100	2,417	5,000	10,000
4.1	<b>Performance Measure</b>	Number of clemency petitions processed by the Office of the Pardon Attorney	8,064	13,763	4,003	2,820	3,000	813	2,500	5,000
4.1	<b>Performance Measure</b>	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney	1,360	1,366	4,163	4,307	2,400	3,882	3,000	3,500
4.1	<b>OUTCOME Measure</b>	Percentage of the total clemency caseload pending within the Office of the Pardon Attorney	93%	45%	26%	22%	N/A	37%	<=40%	<=40%
N/A = Data unavailable										

### 3. Performance, Resources, and Strategies

#### a. Performance Plan and Report for Outcomes

OPA's sole mission is to assist the President in the exercise of his constitutional clemency power, thus OPA's performance measure is the number of clemency petitions fully processed from receipt through recommendation or closure without Presidential action during a given fiscal year. Likewise, OPA's outcome measure is the percentage of clemency petitions that remain pending within OPA as opposed to those that are pending all throughout the clemency process at the end of the fiscal year. In FY 2015, there were 10,073 cases pending universally, while 8,287 were still pending in OPA, which means approximately 82% of all clemency cases were pending in OPA as opposed to waiting for a review by the Office of the Deputy Attorney General (ODAG) and The White House. At the beginning of FY 2021, 5,228 cases were pending with OPA, which equated to just about 37% of all cases pending within OPA. However, after OPA pulled back all undecided cases at the start of the current presidential administration to be updated and reprocessed, OPA ended up with 100% of the clemency caseload or 15,228 cases. The degree to which OPA will be able to meet its performance outcome target of less than or equal to 40 percent of the universal caseload will depend significantly on the volume of new petitions filed in upcoming fiscal years and how quickly OPA can work through the high cumulative number of petitions filed in the last few fiscal years, but were undecided by the President even after OPA performed its work and submitted recommendations on the final disposition of each case.

Since OPA has no control over the number of clemency cases the Department receives for review or how long cases remain in the final stages of review within the Office of the Deputy Attorney General and the White House, OPA started clearly delineating the number of cases that are pending universally compared to those pending within OPA in FY 2014. In addition, OPA changed its performance outcome to track the percentage of cases pending in OPA versus those pending universally because while OPA has some responsibility for all pending cases, we have no control over when and if the Deputy Attorney General or the President take action on the recommendations that have been prepared for them. In FY2019, OPA also created a new performance measurement to track the number of clemency petitions that are more than one year old and still pending within OPA because it has now set a goal of processing cases within one year of them being accepted by the Department. This is currently an overly complicated goal given the current number of outstanding cases that have gone through multiple review cycles, but it will be a valid endeavor to provide outstanding service to both the elected officials and the taxpayers who have an interest in executive clemency functioning in a timely, fair, equitable, repeatable and defensible manner.

## V. Program Increases by Item

**Item Name:** Enhancing the Executive Clemency Function

Budget Decision Unit(s): Office of the Pardon Attorney

Organizational Program: Executive Clemency

Program Increase: Positions 60 Agt/Atty 35 FTE 30 Dollars \$10,940

### Description of Item

The program increase for Enhancing the Executive Clemency Function was requested by DOJ leadership to resolve the underfunded and understaffed clemency program managed by the Office of the Pardon Attorney, who supports the President, through the Deputy Attorney General, in his constitutional clemency power to grant pardons, sentence reductions and reprieves from the death penalty. On the campaign and throughout his first 100 days in office, candidate and President Biden announced his intention to reestablish President Obama's successful use of the constitutional clemency power. President Biden has noted a strong interest in securing the release of individuals facing unduly long sentences for certain non-violent and drug crimes and is currently working with the Department to identify other classes of offenders that would be good candidates for clemency. However, even if he were to focus his attention strictly on drug offenses, according to the Bureau of Prisons (BOP), 66,137 (or 46.3%) of all Federal inmates are primarily incarcerated for drug offenses.<sup>3</sup> He has also indicated a strong conviction for having clemency woven into his social justice efforts and efforts in addressing inequities in the criminal justice system.

President Obama used his clemency power more than any of the 10 prior presidents before him. As the result of his clemency goals, the Office of the Pardon Attorney saw an increased workload by more than 300% during certain years of his administration. OPA anticipates that that the increased workload under the Biden administration would, at a minimum, equal this. Prior to the announcement of any new initiatives that would only increase the number of clemency filings, the Administration has a responsibility to provide a final disposition to over 15,000 petitioners that have languished in the process. Many clemency cases were overcome by events during the course of the last administration, such as the First Step Act and the COVID-19 pandemic releases. However, the Pardon Attorney was still required to pull back over 6,000 cases from the White House and over 2,000 from the Deputy Attorney General at the start of the Biden administration to update them prior to resubmission.

### Justification

A commutation of sentence reduces the period of incarceration; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment. It has no effect upon the underlying conviction and does not necessarily reflect upon the fairness of the sentence

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<sup>3</sup> See [https://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp)

originally imposed. Requests for commutation generally are not accepted unless and until a person has begun serving that sentence. Nor are commutation requests generally accepted from persons who are presently challenging their convictions or sentences through appeal or other court proceeding.

The President may commute a sentence to time served or he may reduce a sentence to achieve the inmate's release after a specified period. Commutation may be granted upon conditions similar to those imposed pursuant to parole or supervised release or, in the case of an alien, upon condition of deportation, but commutation of sentence is an extraordinary remedy. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors (such as demonstrated rehabilitation while in custody or exigent circumstances unforeseen by the court at the time of sentencing) may also provide a basis for recommending commutation in the context of a case. The amount of time already served, and the availability of other remedies are considered in deciding whether to recommend clemency to the President. The possibility that the Department itself could accomplish the same result by petitioning the sentencing court, through a motion to reward substantial assistance under Rule 35 of the Federal Rules of Criminal Procedure, a motion for modification or remission of fine under 18 U.S.C. Section 3573, or a request for compassionate reduction in sentence under 18 U.S.C. Section 3582(c)(1), will also bear on the decision whether to recommend Presidential intervention in the form of clemency.

Each case receives an independent assessment based on the totality of the circumstances. OPA has been underfunded and understaffed for many years, which has resulted in limited bandwidth to appropriately support the Attorney General and President in their constitutional roles, delayed services to the public, as well as slower responses to elected officials with a stake in Presidential clemency actions. If the current caseload of 15,228 cases was evenly split amongst the 9-line attorneys, each attorney would be responsible for a total of 1,692 cases and each of the 4-line paralegals would be responsible for 3,807 cases. The requested program increase will allow OPA to hire the necessary number of staff to work through the backlog of cases which grows daily.

In addition to the huge backlog of over 15,000 pending cases, the Biden administration has signaled to the Department that it intends to use the President's clemency power to advance his social justice efforts and efforts in addressing inequities in the criminal justice system. These discussions remain underway between the White House Counsel, the Deputy Attorney General, and OPA, but we strongly anticipate that the Administration will address backlogged cases while simultaneously developing new clemency programs and initiatives. With the current staffing and funding, this is unrealistic. The requested program increase would put OPA in a position to properly advise and manage a future clemency initiative, program, or priority clemency case analysis while simultaneously addressing the current backlog of 15,000+ cases.

The area of OPA's work that has suffered the most are pardons even though they only account for approximately 20% of OPA's work. A pardon grant will facilitate removal of legal disabilities imposed because of a federal conviction and should lessen to some extent the stigma arising from the conviction. In addition, a pardon may be helpful in obtaining licenses, bonding, housing, or employment post-conviction. In general, a pardon is granted based on the petitioner's demonstrated good conduct for a substantial period after conviction and service of

sentence. The Department's regulations require a petitioner to wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application (28 CFR Section 1.2). The Department may grant a waiver of the five-year requirement in unique circumstances, but circumstances warranting a waiver are rare and unique. In determining whether a particular petitioner should be recommended for a pardon, the following are the principal factors taken into account by OPA.

**Post-conviction conduct, character, and reputation.** An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon. The background investigation customarily conducted by the FBI in pardon cases focuses on the petitioner's financial and employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities and, if applicable, military record. The investigation also serves to verify the petitioner's responses in the pardon application. In assessing post-conviction accomplishments, each petitioner's life circumstances are considered in their totality: it may not be appropriate or realistic to expect "extraordinary" post-conviction achievements from individuals who are less fortunately situated in terms of cultural, educational, social, or economic background.

**Seriousness and relative recency of the offense.** When an offense is very serious, (e.g., a violent crime, major drug trafficking, breach of public trust, or white collar fraud involving substantial sums of money), a suitable length of time should have elapsed in order to avoid denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon the general public should be strongly considered. Victim impact may also be a relevant consideration. When an offense is very old and relatively minor, the equities may weigh more heavily in favor of forgiveness, provided the petitioner is otherwise a suitable candidate for pardon.

**Acceptance of responsibility, remorse, and atonement.** The extent to which a petitioner has accepted responsibility for his or her criminal conduct and made restitution to its victims are important considerations. A petitioner should be genuinely desirous of forgiveness rather than vindication. While the absence of expressions of remorse should not preclude favorable consideration, a petitioner's attempt to minimize or rationalize culpability does not advance the case for pardon. In this regard, statements made in mitigation (e.g., "everybody was doing it," or "I didn't realize it was illegal") should be judged in context. Persons seeking a pardon on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion.

**Need for Relief.** The purpose for which pardon is sought may influence disposition of the petition. A felony conviction may result in a wide variety of legal disabilities under state or federal law, some of which can provide persuasive grounds for recommending a pardon. For example, a specific employment-related need for pardon, such as removal of a bar to licensure or bonding, may make an otherwise marginal case sufficiently compelling to warrant a grant in aid of the individual's continuing rehabilitation. On the other hand, the absence of a specific need should not be held against an otherwise deserving applicant, who may understandably be motivated solely by a strong personal

desire for a sign of forgiveness.

**Official recommendations and reports.** The comments and recommendations of concerned and knowledgeable officials, particularly the United States Attorney or Assistant Attorney General whose office prosecuted the case and the sentencing judge, are carefully considered. The likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities, will always be relevant to the President's decision. Apart from their significance to the individuals who seek them, pardons can play an important part in defining and furthering the rehabilitative goals of the criminal justice system.

Impact on Performance

The work of the Pardon Attorney is split into two forms of clemency (Pardon vs. Commutation). Predominately, the commutation side of OPA’s work is generally considered a component of addressing inequities in the criminal justice system because it has a direct correlation to the President reducing the sentence of low-risk offenders. Historically, approximately 80% of OPA’s caseload are commutation requests, while 20% percent are pardon requests. With the requested program increase, OPA can process three times as many cases to completion each year and ramp up for the Biden clemency programs, projects, and initiatives.

**Funding**

Base Funding

FY 2020 Enacted				2021 Enacted				FY 2022 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
20	11	20	\$4,766	20	11	20	\$4,810	20	11	20	\$5,483

Personnel Increase Cost Summary

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2022 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Clerical and Office Svcs (0300-0399)	4	\$31	\$59	\$144	\$122	\$0	\$0
Accounting and Budget (0500-0599)	2	\$92	\$86	\$181	\$184	\$0	\$0
Attorneys (0905)	35	\$136	\$108	\$225	\$4,776	\$2,160	\$0
Paralegals / Other Law (0900-0999)	19	\$71	\$49	\$137	\$1,352	\$0	\$0
<b>Total Personnel</b>	<b>60</b>				<b>\$6,434</b>	<b>\$2,160</b>	<b>\$0</b>

Non-Personnel Increase Cost Summary

Non-Personnel Item	FY 2022 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Contractual personnel and services	\$4,506	\$0	1	\$1,502	\$0
<b>Total Non-Personnel</b>	<b>\$4,506</b>	<b>\$0</b>	<b>1</b>	<b>\$1,502</b>	<b>\$0</b>

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	20	11	20	\$3,000	\$2,483	\$5,483	\$0	\$0
Increases	60	35	30	\$9,397	\$1,543	\$10,940	\$3,662	\$0
<b>Grand Total</b>	<b>80</b>	<b>46</b>	<b>50</b>	<b>12,397</b>	<b>\$4,026</b>	<b>\$16,423</b>	<b>\$3,662</b>	<b>\$0</b>

Affected Crosscut

Criminal Justice Reform

**VI. Program Offsets by Item**

Not Applicable.

**VII. Exhibits**